

109TH CONGRESS
1ST SESSION

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2005

Mr. SMITH (for himself, Mr. NELSON of Florida, Mr. STEVENS, Mr. INOUE, Mr. MCCAIN, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Identity Theft Protection Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Protection of sensitive personal information.
- Sec. 3. Notification of security breach risk.
- Sec. 4. Security freeze.
- Sec. 5. Enforcement.

Sec. 6. Enforcement by State attorneys general.
 Sec. 7. Preemption of State law.
 Sec. 8. Social security and driver's license number protection.
 Sec. 9. Information security working group.
 Sec. 10. Definitions.
 Sec. 11. Authorization of appropriations.
 Sec. 12. Effective dates.

1 **SEC. 2. PROTECTION OF SENSITIVE PERSONAL INFORMA-**
 2 **TION.**

3 (a) IN GENERAL.—In accordance with regulations
 4 prescribed by the Federal Trade Commission under sub-
 5 section (b), a covered entity shall take reasonable steps
 6 to protect against security breaches and to prevent unau-
 7 thorized access to sensitive personal information the cov-
 8 ered entity sells, maintains, collects, or transfers.

9 (b) REGULATIONS.—Not later than 1 year after the
 10 date of enactment of this Act, the Commission shall pro-
 11 mulgate regulations to implement subsection (a), including
 12 regulations that—

13 (1) require covered entities to develop, imple-
 14 ment, and maintain an effective information security
 15 program that contains administrative, technical, and
 16 physical safeguards for sensitive personal informa-
 17 tion, taking into account the use of technological
 18 safeguards, including encryption, truncation, and
 19 other safeguards available or being developed for
 20 such purposes;

1 (2) require procedures for verifying the creden-
2 tials of any third party seeking to obtain the sen-
3 sitive personal information of another person; and

4 (3) require disposal procedures to be followed
5 by covered entities that—

6 (A) dispose of sensitive personal informa-
7 tion; or

8 (B) transfer sensitive personal information
9 to third parties for disposal.

10 **SEC. 3. NOTIFICATION OF SECURITY BREACH RISK.**

11 (a) SECURITY BREACHES AFFECTING 1,000 OR
12 MORE INDIVIDUALS.—

13 (1) IN GENERAL.—If a covered entity discovers
14 a breach of security and determines that the breach
15 of security affects the sensitive personal information
16 of 1,000 or more individuals, then, before conducting
17 the notification required by subsection (b), it shall—

18 (A) report the breach to the Commission
19 (or other appropriate Federal regulator under
20 section 5); and

21 (B) notify all consumer reporting agencies
22 described in section 603(p)(1) of the Fair Cred-
23 it Reporting Act (15 U.S.C. 1681a(p)(1)) of the
24 breach.

1 (2) FTC WEBSITE PUBLICATIONS.—Whenever
2 the Commission receives a report under paragraph
3 (1)(A), it shall post a report of the breach of secu-
4 rity on its website without disclosing any sensitive
5 personal information or the names of the individuals
6 affected.

7 (b) NOTIFICATION OF CONSUMERS.—Whenever a
8 covered entity discovers a breach of security and deter-
9 mines that the breach of security has resulted in, or that
10 there is a basis for concluding that a reasonable risk of
11 identity theft to 1 or more individuals, the covered entity
12 shall notify each such individual.

13 (c) METHODS OF NOTIFICATION; NOTICE CON-
14 TENT.—Within 1 year after the date of enactment of this
15 Act, the Commission shall promulgate regulations that es-
16 tablish methods of notification to be followed by covered
17 entities in complying with the requirements of this section
18 and the content of the notices required. In promulgating
19 those regulations, the Commission shall take into consider-
20 ation the types of sensitive personal information involved,
21 the nature and scope of the security breach, other appro-
22 priate factors, and the most effective means of notifying
23 affected individuals.

24 (d) TIMING OF NOTIFICATION.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), notice required by subsection (a) shall be
3 given—

4 (A) in the most expedient manner prac-
5 ticable;

6 (B) without unreasonable delay, but not
7 later than 90 days after the date on which the
8 breach of security was discovered by the covered
9 entity; and

10 (C) in a manner that is consistent with
11 any measures necessary to determine the scope
12 of the breach and restore the security and in-
13 tegrity of the data system.

14 (2) LAW ENFORCEMENT AND HOMELAND SECU-
15 RITY RELATED DELAYS.—Notwithstanding para-
16 graph (1), the giving of notice as required by that
17 paragraph may be delayed for a reasonable period of
18 time if—

19 (A) a Federal law enforcement agency de-
20 termines that the timely giving of notice under
21 subsections (a) and (b), as required by para-
22 graph (1), would materially impede a civil or
23 criminal investigation; or

24 (B) a Federal national security or home-
25 land security agency determines that such time-

1 ly giving of notice would threaten national or
2 homeland security.

3 **SEC. 4. SECURITY FREEZE.**

4 (a) In General.—

5 (1) EMPLACEMENT.—A consumer may place a
6 security freeze on his or her credit report by making
7 a request to a consumer credit reporting agency in
8 writing or by telephone.

9 (2) CONSUMER DISCLOSURE.—If a consumer
10 requests a security freeze, the consumer credit re-
11 porting agency shall disclose to the consumer the
12 process of placing and removing the security freeze
13 and explain to the consumer the potential con-
14 sequences of the security freeze.

15 (b) EFFECT OF SECURITY FREEZE.—

16 (1) RELEASE OF INFORMATION BLOCKED.—If a
17 security freeze is in place on a consumer's credit re-
18 port, a consumer reporting agency may not release
19 information from the credit report to a third party
20 without prior express authorization from the con-
21 sumer.

22 (2) INFORMATION PROVIDED TO THIRD PAR-
23 TIES.—Paragraph (2) does not prevent a consumer
24 credit reporting agency from advising a third party
25 that a security freeze is in effect with respect to the

1 consumer's credit report. If a third party, in connec-
2 tion with an application for credit, requests access to
3 a consumer credit report on which a security freeze
4 is in place, the third party may treat the application
5 as incomplete.

6 (c) REMOVAL; TEMPORARY SUSPENSION.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (4), a security freeze shall remain in place
9 until the consumer requests that the security freeze
10 be removed. A consumer may remove a security
11 freeze on his or her credit report by making a re-
12 quest to a consumer credit reporting agency in writ-
13 ing or by telephone.

14 (2) CONDITIONS.—A consumer credit reporting
15 agency may remove a security freeze placed on a
16 consumer's credit report only—

17 (A) upon the consumer's request, pursuant
18 to paragraph (1); or

19 (B) if the agency determines that the con-
20 sumer's credit report was frozen due to a mate-
21 rial misrepresentation of fact by the consumer.

22 (3) NOTIFICATION TO CONSUMER.—If a con-
23 sumer credit reporting agency intends to remove a
24 freeze upon a consumer's credit report pursuant to
25 paragraph (2)(B), the consumer credit reporting

1 agency shall notify the consumer in writing prior to
 2 removing the freeze on the consumer's credit report.

3 (4) TEMPORARY SUSPENSION.—A consumer
 4 may have a security freeze on his or her credit re-
 5 port temporarily suspended by making a request to
 6 a consumer credit reporting agency in writing or by
 7 telephone and specifying beginning and ending dates
 8 for the period during which the security freeze is not
 9 to apply to that consumer's credit report.

10 (d) RESPONSE TIMES; NOTIFICATION OF OTHER EN-
 11 TITIES.—

12 (1) IN GENERAL.—A consumer credit reporting
 13 agency shall—

14 (A) place a security freeze on a consumer's
 15 credit report under subsection (a) no later than
 16 5 business days after receiving a request from
 17 the consumer under subsection (a)(1); and

18 (B) remove, or temporarily suspend, a se-
 19 curity freeze within 3 business days after re-
 20 ceiving a request for removal or temporary sus-
 21 pension from the consumer under subsection
 22 (c).

23 (2) NOTIFICATION OF OTHER COVERED ENTI-
 24 TIES.—If the consumer requests in writing or by
 25 telephone that other covered entities be notified of

1 the request, the consumer reporting agency shall no-
2 tify all other consumer reporting agencies described
3 in section 603(p)(1) of the Fair Credit Reporting
4 Act (15 U.S.C. 1681a(p)(1)) of the request within 3
5 days after placing, removing, or temporarily sus-
6 pending a security freeze on the consumer's credit
7 report under subsection (a), (c)(2)(A), or subsection
8 (c)(4), respectively.

9 (3) IMPLEMENTATION BY OTHER COVERED EN-
10 TITIES.—A consumer reporting agency that is noti-
11 fied of a request under paragraph (2) to place, re-
12 move, or temporarily suspend a security freeze on a
13 consumer's credit report shall place, remove, or tem-
14 porarily suspend the security freeze on that credit
15 report within 3 business days after receiving the no-
16 tification.

17 (e) CONFIRMATION.—Whenever a consumer credit re-
18 porting agency places, removes, or temporarily suspends
19 a security freeze on a consumer's credit report at the re-
20 quest of that consumer under subsection (a) or (c), respec-
21 tively, it shall send a written confirmation thereof to the
22 consumer within 10 business days after placing, removing,
23 or temporarily suspending the security freeze on the credit
24 report. This subsection does not apply to the placement,
25 removal, or temporary suspension of a security freeze by

1 a consumer reporting agency because of a notification re-
2 ceived under subsection (d)(2).

3 (f) ID REQUIRED.—A consumer credit reporting
4 agency may not place, remove, or temporarily suspend a
5 security freeze on a consumer’s credit report at the con-
6 sumer’s request unless the consumer provides proper iden-
7 tification (within the meaning of section 610(a)(1) of the
8 Fair Credit Reporting Act (15 U.S.C. 1681h) and the reg-
9 ulations thereunder.

10 (g) EXCEPTIONS.—This section does not apply to the
11 use of a consumer credit report by any of the following:

12 (1) A person or entity, or a subsidiary, affiliate,
13 or agent of that person or entity, or an assignee of
14 a financial obligation owing by the consumer to that
15 person or entity, or a prospective assignee of a fi-
16 nancial obligation owing by the consumer to that
17 person or entity in conjunction with the proposed
18 purchase of the financial obligation, with which the
19 consumer has or had prior to assignment an account
20 or contract, including a demand deposit account, or
21 to whom the consumer issued a negotiable instru-
22 ment, for the purposes of reviewing the account or
23 collecting the financial obligation owing for the ac-
24 count, contract, or negotiable instrument.

1 (2) Any Federal, State or local agency, law en-
2 forcement agency, trial court, or private collection
3 agency acting pursuant to a court order, warrant, or
4 subpoena.

5 (3) A child support agency or its agents or as-
6 signs acting pursuant to subtitle D of title IV of the
7 Social Security Act (42 U.S.C. et seq.) or similar
8 State law.

9 (4) The Department of Health and Human
10 Services, a similar State agency, or the agents or as-
11 signs of the Federal or State agency acting to inves-
12 tigate medicare or medicaid fraud.

13 (5) The Internal Revenue Service or a State or
14 municipal taxing authority, or a State department of
15 motor vehicles, or any of the agents or assigns of
16 these Federal, State, or municipal agencies acting to
17 investigate or collect delinquent taxes or unpaid
18 court orders or to fulfill any of their other statutory
19 responsibilities.

20 (6) The use of consumer credit information for
21 the purposes of prescreening as provided for by the
22 Federal Fair Credit Reporting Act (15 U.S.C. 1681
23 et seq.).

1 (7) Any person or entity administering a credit
2 file monitoring subscription to which the consumer
3 has subscribed.

4 (8) Any person or entity for the purpose of pro-
5 viding a consumer with a copy of his or her credit
6 report or credit score upon the consumer's request.

7 (h) FEES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), a consumer credit reporting agency may
10 charge a reasonable fee, as determined by the Com-
11 mission, for placing, removing, or temporarily sus-
12 pending a security freeze on a consumer's credit re-
13 port.

14 (2) ID THEFT VICTIMS.—A consumer credit re-
15 porting agency may not charge a fee for placing, re-
16 moving, or temporarily suspending a security freeze
17 on a consumer's credit report if—

18 (A) the consumer is a victim of identity
19 theft; and

20 (B) the consumer has filed a police report
21 with respect to the theft.

22 (i) LIMITATION ON INFORMATION CHANGES IN FRO-
23 ZEN REPORTS.—

24 (1) IN GENERAL.—If a security freeze is in
25 place on a consumer's credit report, a consumer

1 credit reporting agency may not change any of the
 2 following official information in that credit report
 3 without sending a written confirmation of the
 4 change to the consumer within 30 days after the
 5 change is made:

6 (A) Name.

7 (B) Date of birth.

8 (C) Social Security number.

9 (D) Address.

10 (2) CONFIRMATION.—Paragraph (1) does not
 11 require written confirmation for technical modifica-
 12 tions of a consumer's official information, including
 13 name and street abbreviations, complete spellings, or
 14 transposition of numbers or letters. In the case of an
 15 address change, the written confirmation shall be
 16 sent to both the new address and to the former ad-
 17 dress.

18 (j) CERTAIN ENTITY EXEMPTIONS.—

19 (1) AGGREGATORS AND OTHER AGENCIES.—

20 The provisions of subsections (a) through (h) do not
 21 apply to a consumer credit reporting agency that
 22 acts only as a reseller of credit information by as-
 23 sembling and merging information contained in the
 24 data base of another consumer credit reporting
 25 agency or multiple consumer credit reporting agen-

1 cies, and does not maintain a permanent data base
2 of credit information from which new consumer
3 credit reports are produced.

4 (2) OTHER EXEMPTED ENTITIES.—The fol-
5 lowing entities are not required to place a security
6 freeze in a credit report:

7 (A) A check services or fraud prevention
8 services company, which issues reports on inci-
9 dents of fraud or authorizations for the purpose
10 of approving or processing negotiable instru-
11 ments, electronic funds transfers, or similar
12 methods of payments.

13 (B) A deposit account information service
14 company, which issues reports regarding ac-
15 count closures due to fraud, substantial over-
16 drafts, ATM abuse, or similar negative informa-
17 tion regarding a consumer, to inquiring banks
18 or other financial institutions for use only in re-
19 viewing a consumer request for a deposit ac-
20 count at the inquiring bank or financial institu-
21 tion.

22 **SEC. 5. ENFORCEMENT.**

23 (a) ENFORCEMENT BY COMMISSION.—Except as pro-
24 vided in subsection (c), this Act shall be enforced by the
25 Commission.

1 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
 2 PRACTICE.—The violation of any provision of this Act
 3 shall be treated as an unfair or deceptive act or practice
 4 proscribed under a rule issued under section 18(a)(1)(B)
 5 of the Federal Trade Commission Act (15 U.S.C.
 6 57a(a)(1)(B)).

7 (c) ENFORCEMENT BY CERTAIN OTHER AGEN-
 8 CIES.—Compliance with this Act shall be enforced
 9 under—

10 (1) section 8 of the Federal Deposit Insurance
 11 Act (12 U.S.C. 1818), in the case of—

12 (A) national banks, and Federal branches
 13 and Federal agencies of foreign banks, by the
 14 Office of the Comptroller of the Currency;

15 (B) member banks of the Federal Reserve
 16 System (other than national banks), branches
 17 and agencies of foreign banks (other than Fed-
 18 eral branches, Federal agencies, and insured
 19 State branches of foreign banks), commercial
 20 lending companies owned or controlled by for-
 21 eign banks, and organizations operating under
 22 section 25 or 25A of the Federal Reserve Act
 23 (12 U.S.C. 601 and 611), by the Board; and

24 (C) banks insured by the Federal Deposit
 25 Insurance Corporation (other than members of

1 the Federal Reserve System) and insured State
 2 branches of foreign banks, by the Board of Di-
 3 rectors of the Federal Deposit Insurance Cor-
 4 poration;

5 (2) section 8 of the Federal Deposit Insurance
 6 Act (12 U.S.C. 1818), by the Director of the Office
 7 of Thrift Supervision, in the case of a savings asso-
 8 ciation the deposits of which are insured by the Fed-
 9 eral Deposit Insurance Corporation;

10 (3) the Federal Credit Union Act (12 U.S.C.
 11 1751 et seq.) by the National Credit Union Adminis-
 12 tration Board with respect to any Federal credit
 13 union; and

14 (4) the Securities and Exchange Act of 1934
 15 (15 U.S.C. 78a et seq.) by the Securities and Ex-
 16 change Commission with respect to—

17 (A) a broker or dealer subject to that Act;

18 (B) an investment company subject to the
 19 Investment Company Act of 1940 (15 U.S.C.
 20 80a–1 et seq.); and

21 (C) an investment advisor subject to the
 22 Investment Advisers Act of 1940 (15 U.S.C.
 23 80b–1 et seq.).

24 (d) EXERCISE OF CERTAIN POWERS.—For the pur-
 25 pose of the exercise by any agency referred to in sub-

1 section (c) of its powers under any Act referred to in that
2 subsection, a violation of this Act is deemed to be a viola-
3 tion of a requirement imposed under that Act. In addition
4 to its powers under any provision of law specifically re-
5 ferred to in subsection (c), each of the agencies referred
6 to in that subsection may exercise, for the purpose of en-
7 forcing compliance with any requirement imposed under
8 this Act, any other authority conferred on it by law.

9 (e) PENALTIES.—

10 (1) IN GENERAL.—Notwithstanding section
11 5(m) of the Federal Trade Commission Act (15
12 U.S.C. 45(m)), the Commission may not obtain a
13 civil penalty under that section for a violation of this
14 Act in excess of—

15 (A) \$11,000 for each such individual; and

16 (B) \$11,000,000 in the aggregate for all
17 such individuals with respect to the same viola-
18 tion.

19 (2) OTHER AUTHORITY NOT AFFECTED.—Noth-
20 ing in this Act shall be construed to limit or affect
21 in any way the Commission's authority to bring en-
22 forcement actions or take any other measure under
23 the Federal Trade Commission Act (15 U.S.C. 41 et
24 seq.) or any other provision of law.

1 (f) NO PRIVATE CAUSE OF ACTION.—Nothing in this
 2 Act establishes a private cause of action against a covered
 3 entity for the violation of any provision of this Act.

4 (g) COMPLIANCE WITH GRAMM-LEACH-BLILEY
 5 ACT.—Any person to which title V of the Gramm-Leach-
 6 Bliley Act (15 U.S.C. 6801 et seq.) applies shall be
 7 deemed to be in compliance with the notification require-
 8 ments of this Act with respect to a breach of security if
 9 that person is in compliance with the notification require-
 10 ments of that title with respect to that breach of security.

11 **SEC. 6. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

12 (a) IN GENERAL.—A State, as *parens patriae*, may
 13 bring a civil action on behalf of its residents in an appro-
 14 priate district court of the United States to enforce the
 15 provisions of this Act, or to impose the civil penalties au-
 16 thorized by section 5, whenever the attorney general of
 17 the State has reason to believe that the interests of the
 18 residents of the State have been or are being threatened
 19 or adversely affected by a covered entity that violates this
 20 Act or a regulation under this Act.

21 (b) NOTICE.—The State shall serve written notice to
 22 the Commission (or other appropriate Federal regulator
 23 under section 5) of any civil action under subsection (a)
 24 prior to initiating such civil action. The notice shall in-
 25 clude a copy of the complaint to be filed to initiate such

1 civil action, except that if it is not feasible for the State
 2 to provide such prior notice, the State shall provide such
 3 notice immediately upon instituting such civil action.

4 (c) AUTHORITY TO INTERVENE.—Upon receiving the
 5 notice required by subsection (b), the Commission (or
 6 other appropriate Federal regulator under section 5) may
 7 intervene in such civil action and upon intervening—

8 (1) be heard on all matters arising in such civil
 9 action; and

10 (2) file petitions for appeal of a decision in such
 11 civil action.

12 (d) CONSTRUCTION.—For purposes of bringing any
 13 civil action under subsection (a), nothing in this section
 14 shall prevent the attorney general of a State from exer-
 15 cising the powers conferred on the attorney general by the
 16 laws of such State to conduct investigations or to admin-
 17 ister oaths or affirmations or to compel the attendance
 18 of witnesses or the production of documentary and other
 19 evidence.

20 (e) VENUE; SERVICE OF PROCESS.—In a civil action
 21 brought under subsection (a)—

22 (1) the venue shall be a judicial district in
 23 which—

24 (A) the covered entity operates;

1 (B) the covered entity was authorized to do
 2 business; or

3 (C) where the defendant in the civil action
 4 is found;

5 (2) process may be served without regard to the
 6 territorial limits of the district or of the State in
 7 which the civil action is instituted; and

8 (3) a person who participated with a covered
 9 entity in an alleged violation that is being litigated
 10 in the civil action may be joined in the civil action
 11 without regard to the residence of the person.

12 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
 13 ACTION IS PENDING.—If the Commission (or other appro-
 14 priate Federal agency under section 5) has instituted a
 15 civil action or an administrative action for violation of this
 16 Act, no State attorney general, or official or agency of a
 17 State, may bring an action under this subsection during
 18 the pendency of that action against any defendant named
 19 in the complaint of the Commission or the other agency
 20 for any violation of this Act alleged in the complaint.

21 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
 22 tained in this section shall prohibit an authorized State
 23 official from proceeding in State court to enforce a civil
 24 or criminal statute of such State.

1 **SEC. 7. PREEMPTION OF STATE LAW.**

2 (a) IN GENERAL.—This Act preempts any State or
3 local law, regulation, or rule that requires a covered enti-
4 ty—

5 (1) to develop, implement, or maintain informa-
6 tion security programs to which this Act applies; or

7 (2) to notify individuals of breaches of security
8 regarding their sensitive personal information.

9 (b) LIABILITY.—This Act preempts any State or local
10 law, regulation, rule, administrative procedure, or judicial
11 precedent under which liability is imposed on a covered
12 entity for failure—

13 (1) to implement and maintain an adequate in-
14 formation security program; or

15 (2) to notify an individual of any breach of se-
16 curity pertaining to any sensitive personal informa-
17 tion about that individual.

18 (c) SECURITY FREEZE.—This Act preempts any
19 State or local law, regulation, or rule that requires con-
20 sumer reporting agencies to impose a security freeze on
21 consumer credit reports at the request of a consumer.

22 **SEC. 8. SOCIAL SECURITY NUMBER PROTECTION.**

23 (a) PROHIBITION OF UNNECESSARY SOLICITATION
24 OF SOCIAL SECURITY NUMBERS.—No covered entity may
25 solicit any social security number from an individual un-

1 less there is a specific use of the social security number
 2 for which no other identifier reasonably can be used.

3 (b) PROHIBITION OF THE DISPLAY OF SOCIAL SECU-
 4 RITY NUMBERS ON EMPLOYEE IDENTIFICATION CARDS,
 5 ETC.—

6 (1) IN GENERAL.—No covered entity may dis-
 7 play the social security number (or any derivative of
 8 such number) of an individual on any card or tag
 9 that is commonly provided to employees (or to their
 10 family members), faculty, staff, or students for pur-
 11 poses of identification.

12 (2) DRIVER’S LICENSES.—A State may not dis-
 13 play the social security number of an individual on
 14 driver’s licenses issued by that State.

15 (c) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-
 16 CURITY ACCOUNT NUMBERS.—

17 (1) IN GENERAL.—Section 205(c)(2)(C) of the
 18 Social Security Act (42 U.S.C. 405(c)(2)(C)), as
 19 amended by subsection (b), is amended by adding at
 20 the end the following new clause:

21 “(xi) No executive, legislative, or judicial agency or
 22 instrumentality of the Federal Government or of a State
 23 or political subdivision thereof (or person acting as an
 24 agent of such an agency or instrumentality) may employ,
 25 or enter into a contract for the use or employment of, pris-

1 oners in any capacity that would allow such prisoners ac-
 2 cess to the social security account numbers of other indi-
 3 viduals. For purposes of this clause, the term ‘prisoner’
 4 means an individual confined in a jail, prison, or other
 5 penal institution or correctional facility.”.

6 (2) TREATMENT OF CURRENT ARRANGE-
 7 MENTS.—In the case of—

8 (i) prisoners employed as described in
 9 clause (xi) of section 205(c)(2)(C) of the
 10 Social Security Act (42 U.S.C.
 11 405(c)(2)(C)), as added by paragraph (1),
 12 on the date of enactment of this Act, and

13 (ii) contracts described in such clause
 14 in effect on such date,

15 the amendment made by this section shall take
 16 effect 90 days after the date of enactment of
 17 this Act.

18 **SEC. 9. INFORMATION SECURITY WORKING GROUP.**

19 (a) INFORMATION SECURITY WORKING GROUP.—
 20 The Chairman of the Commission shall establish an Infor-
 21 mation Security Working Group to develop best practices
 22 to protect sensitive personal information stored and trans-
 23 ferred. The Working Group shall be composed of industry
 24 participants, consumer groups, and other interested par-
 25 ties.

1 (b) REPORT.—Not later than 12 months after the
 2 date on which the Working Group is established under
 3 subsection (a), the Working Group shall submit to Con-
 4 gress a report on their findings.

5 **SEC. 10. DEFINITIONS.**

6 In this Act:

7 (1) BREACH OF SECURITY.—The term “breach
 8 of security” means unauthorized access to and ac-
 9 quisition of data in any form or format containing
 10 sensitive personal information that compromises the
 11 security or confidentiality of such information and
 12 establishes a basis to conclude that a reasonable risk
 13 of identity theft to an individual exists.

14 (2) COMMISSION.—The term “Commission”
 15 means the Federal Trade Commission.

16 (3) CONSUMER CREDIT REPORTING AGENCY.—
 17 The term “consumer credit reporting agency” means
 18 any person which, for monetary fees, dues, or on a
 19 cooperative nonprofit basis, regularly engages in
 20 whole or in part in the practice of assembling or
 21 evaluating consumer credit information or other in-
 22 formation on consumers for the purpose of fur-
 23 nishing credit reports to third parties, and which
 24 uses any means or facility of interstate commerce

1 for the purpose of preparing or furnishing credit re-
2 ports.

3 (4) COVERED ENTITY.—The term “covered en-
4 tity” means a sole proprietorship, partnership, cor-
5 poration, trust, estate, cooperative, association, or
6 other commercial entity, and any charitable, edu-
7 cational, or nonprofit organization, that acquires,
8 maintains, or utilizes sensitive personal information.

9 (5) CREDIT REPORT.—The term “credit report”
10 means a consumer report, as defined in section
11 603(d) of the Federal Fair Credit Reporting Act (15
12 U.S.C. 1681a(p)), that is used or expected to be
13 used or collected in whole or in part for the purpose
14 of serving as a factor in establishing a consumer’s
15 eligibility for credit for personal, family or household
16 purposes.

17 (6) IDENTITY THEFT.—The term “identity
18 theft” means the unauthorized acquisition, purchase,
19 sale, or use by any person of an individual’s sensitive
20 personal information that—

21 (A) violates section 1028 of title 18,
22 United States Code, or any provision of State
23 law in pari materia; or

1 (B) results in economic loss to the indi-
2 vidual whose sensitive personal information was
3 used.

4 (7) REVIEWING THE ACCOUNT.—The term “re-
5 viewing the account” includes activities related to
6 account maintenance, monitoring, credit line in-
7 creases, and account upgrades and enhancements.

8 (8) SENSITIVE PERSONAL INFORMATION.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraphs (B) and (C), the term “sensitive
11 personal information” means an individual’s
12 name, address, or telephone number combined
13 with 1 or more of the following data elements
14 related to that individual:

15 (i) Social security number, taxpayer
16 identification number, or employer identi-
17 fication number.

18 (ii) Financial account number, or
19 credit card or debit card number of such
20 individual, combined with any required se-
21 curity code, access code, or password that
22 would permit access to such individual’s
23 account.

1 (iii) State driver's license identifica-
2 tion number or State resident identifica-
3 tion number.

4 (iv) Consumer credit report.

5 (v) Employee, faculty, student, or
6 United States armed forces serial number.

7 (vi) Genetic or biometric information.

8 (vii) Mother's maiden name.

9 (B) FTC MODIFICATIONS.—The Commis-
10 sion may, through a rulemaking proceeding,
11 designate other identifying information that
12 may be used to effectuate identity theft as sen-
13 sitive personal information for purposes of this
14 Act and limit or exclude any information de-
15 scribed in subparagraph (A) from the definition
16 of sensitive personal information for purposes of
17 this Act.

18 (C) PUBLIC RECORDS.—Nothing in this
19 Act prohibits a covered entity from obtaining,
20 aggregating, or using sensitive personal infor-
21 mation it lawfully obtains from public records
22 in a manner that does not violate this Act.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Com-
3 mission \$1,000,000 for each of fiscal years 2006 through
4 2010 to carry out this Act.

5 **SEC. 12. EFFECTIVE DATES.**

6 (a) IN GENERAL.—Except as provided in subsection
7 (b), the provisions of this Act take effect upon its enact-
8 ment.

9 (b) PROVISIONS REQUIRING RULEMAKING.—The
10 Commission shall initiate 1 or more rulemaking pro-
11 ceedings under sections 2, 3, and 4 within 45 days after
12 the date of enactment of this Act. The Commission shall
13 promulgate all final rules pursuant to those rulemaking
14 proceedings within 1 year after the date of enactment of
15 this Act. The provisions of sections 2, 3, and 4 shall take
16 effect on the same date 6 months after the date on which
17 the Commission promulgates the last final rule under the
18 proceeding or proceedings commenced under the preceding
19 sentence.

20 (c) PREEMPTION.—Section 7 shall take effect at the
21 same time as sections 2, 3, and 4 take effect.

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